

अण्डमान तथा  
Andaman And



निकोबार राजपत्र  
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No. 55, Port Blair, Wednesday, April 15, 2015

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अण्डमान तथा निकोबार प्रशासन  
ANDAMAN AND NICOBAR ADMINISTRATION  
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 15<sup>th</sup> April, 2015

No. 52/2015/F.No.3-489/2011-Labour.— In pursuance of Sub-Section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) read with Notification No.LR-1 (59)/55 dated 13<sup>th</sup> December, 1955 of the Govt. of India, Ministry of Labour and A&N Admn. Notification No. 144/2008/F.No.17-2/2007-Labour dated 7/10/2008, the Secretary (Lab.), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made to the Industrial Tribunal for adjudication vide Order No. L-110122/1/2011-IR(M) dated 08/12/2011 of the Under Secretary, Government of India,/Bharat Sarkar, Ministry of Labour / Shram Mantralaya, New Delhi, in the matter of Industrial Dispute between the Management of the Airport Authority of India, Port Blair and their workman.

IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT  
ANDAMAN AND NICOBAR ISLANDS, PORT BLAIR  
I.D. CASE NO. 01/2012  
PRESENT: SHRI SUDIP NIYOGI  
JUDGE, LABOUR COURT  
ANDAMAN & NICOBAR ISLANDS, PORT BLAIR

Shri Soma Oraon

.....First party

- Versus -

Airport Authority of India, Port Blair

.....Second party

DATE: 20.02.2015

### **JUDGEMENT**

The following reference was made to this Court on 08/12/2011 by the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of the dispute between the Manager, Airport Authority of India, Port Blair and their workman.

### **The Schedule**

"Whether the action of the management of AAI at Port Blair in not adhering to the norms laid down in the ID Act, 1947 in the matter of engagement/ disengagement of Shri Soma Oraon as a Daily Rated Mazdoor under direct payment system from 01/10/2006 to 30/11/2009 and later on removing him from the said status, without notice and transferring him under the payroll of a contractor, is justified and legal ? What relief the workman is entitled to ?"

According to the Statement of Demand filed by the First Party (workman), that he worked as Daily Rated Mazdoor under the Manager, Airport Authority of India, Port Blair from 01/10/2006 to 08/03/2010 without break and thus he has completed 240 days of service in twelve calendar months during that period.

In 2008, he requested his employer for regularization of his service but on 08/03/2011 his service was terminated by the management of the Second Party without giving any notice or compensation as per Section 25(F) of the Industrial Disputes Act, 1947. Thereafter, he lodged an Industrial Dispute before the Conciliation Officer, Port Blair through the President, A & N Forest Sramik Karmachari Union, Bambooflat, South Andaman. The Conciliation Officer held a number of meetings for settlement of dispute but the Second Party refused to reinstate him and therefore the Conciliation Proceedings failed.

So the First Party claimed that retrenchment/ termination of his service is illegal and he is entitled to be reinstated in his service with full back wages.

In the written objection, the Second Party claimed that the service of the First Party was acquired purely on outsourcing basis and the requirement of the service ended with the introduction of CISF Man Power at Airport. It is further claimed that being an outsourced requirement, First Party would get wages through service provider (Annual Maintenance Contract).

First Party has examined himself in this case and produced the Xerox copies of 14 cheques of different dates marked Exhibit-1 to Exhibit-14.

On behalf of the Second Party two witnesses, Shri Nitin Dhakate and Shri J. Pandian were examined. Second Party also filed copies of 3 vouchers (Exhibit-A to Exhibit-C) and acceptance of tender for AMC for different works in the Port Blair Airport.

### **DECISIONS**

It is argued on behalf of the First Party workman that he had worked from 01/10/2006 to 08/03/2010 as a DRM without any break under the Second Party and thereby, he had completed service for more than 240 days in 12 calendar months, it is further said that his request for regularization of his service was turned down by the Second Party and ultimately, his service was terminated illegally by the Second Party without complying with the provisions of the Industrial Disputes Act.

It is argued on behalf of the Second Party that the First Party had worked under a Contractor as a Safaiwala and his service was purely temporary in nature. It is further

said that the First Party didn't have any employer and employee relationship with the Second Party and that being so the First Party is not entitled to any claim of reinstatement with back wages.

During argument, the representative of the First Party has claimed that the First Party would get his remuneration directly from the Second Party by cheques and this practice continued till December, 2009. In connection with the case of First Party, the decision reported in 2005 LAB. I.C.229(SC) (Bank of Baroda-Vs-Ghemarbhai Harjibhai Rabari) has been cited, where according to the representative of the First Party, it was held that any workman who completed 240 days cannot be terminated or retrenched without following the provision of Section 25F of the Industrial Disputes Act, 1947.

From the materials on record and also from the submissions of both the parties, it is clear, admittedly, the First Party had worked in the Airport at Port Blair from the month of October, 2006 to February, 2010. It is not denied by the Second Party about the claim of the First Party that he had worked for more than 240 days in a calendar of 12 months. Though, the Second Party claimed that the First Party had been engaged by a Contractor.

From the documents filed by the parties, it is found that Exhibit-1 to Exhibit-14 are the Xerox copies of cheques, which were issued to the First Party by the Second Party, showing that the payment to the First Party had been made by cheques since October, 2008 to November, 2009. Again, Exhibit-A, Exhibit-B and Exhibit-C produced on behalf of the second party reveal that these are the copies of the vouchers of payment of wages to Soma Oraon from December, 2009 to February, 2010 and these reveal that payment was made by C. Palaniswamy, Govt. Contractor, Hut Bay. Now, what is clear from this is that previously, payment of wages to the First Party would have been made through cheques issued by the Second Party, but subsequently, the said mode of payment has been changed when the contractor himself started wages by case.

Now, the question is whether the direct payment of wages to the First Party by the Second Party by cheques has amounted to a relationship of employer and employee between the Second Party and First Party ?

So far as his relationship with the Second Party is concerned, actually, it is the contention of the First Party that he was engaged directly by the Second Party, for which, he used to be paid by the Second Party by cheques. Therefore, it is his claim that he was terminated by the Second Party without following the provisions of the Industrial Disputes Act.

In such circumstances, it is to see, whether the First Party had been really engaged as DRM by the Second Party or in other words he was engaged by the Contractor to work in the establishment of the Second Party ? In order to find out the answer to this question, we have to go through the evidence adduced on behalf of the parties.

The First Party Shri Soma Oraon, who has examined himself as PW -1, during his evidence, has claimed that he was not given any appointment letter for his work by the Second Party and he has also admitted that since 1<sup>st</sup> October, 2006 to 31<sup>st</sup> December, 2010 he worked as Safaiwala at Port Blair Airport under C. Palaniswamy. This contention during his cross-examination, demolishes his claim made in this case because if, he is engaged by a Contractor, herein, C. Palaniswamy, for work under Second Party, no relationship of employer and employee or master or servant existed between him and the Second Party and that being so, the claim of the Second Party that he was engaged by a Contractor, is also vindicated.

OPW-2 Shri J. Pandian who claims to be the Manager of C. Palaniswamy, Govt. Contractor, Hut Bay. He also claims that their company would pay the wages of the First Party. He also claimed that subsequently, the First Party has left his job on his own. So far as the payment of wages to the First Party by cheques is concerned, this OPW-2 has claimed during his cross examination that on their instructions Airport Authority would issue cheques to the First Party.

OPW-1 Shri Nitin Dhakate also during his cross examination has deposed that they used to pay the First Party by issuing cheques to ensure timely payment. However, subsequently, as the Audit Department raised objection to the said mode of payment, Contractor started paying him by way of cash.

So, on the basis of the evidence adduced by the parties, it can be safely held that the mere fact of making payment of wages to the First Party by the Second Party by cheques cannot establish any relationship of employer and employee or master and servant between the parties to the dispute in the present facts and circumstances of this case.

In this connection, be it noted here that the decision reported in 2005 LAB. 1. C. 2279 Supreme Court as cited on behalf of the First Party is not found to be applicable in this case as the facts and circumstances of that case are different from those in the present case.

Therefore, on going through the materials on record, it is clear that the First Party who had worked under the establishment of the Second Party had been admittedly, engaged by a Contractor and that being so he cannot get the relief as prayed for by him in this case.

Accordingly, it is

**ORDERED**

That the action of the Airport Authority of India, Port Blair as mention, in the schedule of reference is legal and justified.

The First Party workman is not entitled to any relief in this case.

Let a copy of this order be forwarded to the Lt. Governor, A & N Islands, for information and due publication in the Official Gazette.

Directed and corrected by me.

Sd./-

**(Sudip Niyogi)**  
Presiding Officer,  
Labour Court, Port Blair.

By order of the Secretary (Labour)

Sd./-

**(S.S. Chander Sekhar)**  
Assistant Secretary (Lab.)